



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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Andrew R. Wheeler  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO**

**A & K Development Corporation  
FOR**

**Trinity Senior Village  
Virginia Pollutant Discharge Elimination System Registration No.  
VAR10N099**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and A & K Development Corporation, regarding the Trinity Senior Village site, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2019 Permit" or "Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024. A & K Development Corporation applied for and was granted coverage under the 2019 Permit on September 11, 2019.

3. "A & K Development Corporation" means A & K Development Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. A & K Development Corporation is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. "BMP" means Best Management Practice, the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, used to prevent or reduce the pollution of surface waters and groundwater systems. 9 VAC 25-870-10.
6. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Discharge" means the discharge of a pollutant.
10. "Discharge of a pollutant" means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
11. "ESC Regulations" means the Erosion and Sediment Control Regulations, 9 VAC 25-840-10 et seq.
12. "Facility" or "Site" means the Trinity Senior Village construction site located at 3065 Germanna Highway, Locust Grove, Virginia 22508, from which discharges of stormwater associated with construction activity occur.
13. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.

14. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
15. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
16. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
17. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
18. "Registration Statement" means a registration statement for coverage under the 2019 Permit.
19. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
21. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands Va. Code § 62.1-44.3.
22. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
23. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
24. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
25. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.

26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "VESCP" means the Virginia Erosion and Sediment Control Program, which is a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations. Va. Code § 62.1-44.15:51.
30. "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to Va. Code § 62.1-44.15:2-5102. Va. Code § 62.1-44.15:51.
31. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
32. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
33. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

34. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

**SECTION C: Findings of Fact and Conclusions of Law**

1. A & K Development Corporation owns the Trinity Senior Village construction site, located in Locust Grove, Orange County, Virginia, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for the Site. Orange County is the VESCP authority for the Site.
3. A & K Development Corporation applied for and, on September 11, 2019, was granted coverage under the 2019 Permit, VAR10 of the General Permit Regulation. A & K Development Corporation was assigned registration number VAR10N099.
4. The Permit allows A & K Development Corporation to discharge stormwater associated with construction activities from the Site to an unnamed tributary of Flat Run, in strict compliance with the terms and conditions of the 2019 Permit.
5. Flat Run is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
6. Flat Run drains to the Rapidan River, which is located in the Rappahannock River Basin. The Rapidan River, approximately 3 miles downstream from this site, is listed in DEQ's 305(b) report as impaired for fish consumption use, due to mercury in fish tissues.
7. DEQ staff conducted compliance inspections of the Site on the following dates: January 27, 2020, February 21, 2020, May 6, 2020, May 28, 2020, June 29, 2020, July 22, 2020, and November 13, 2020. Across these inspections, DEQ staff observed the following deficiencies:
  - a. During the January 27, February 21, May 28, and November 13, 2020 inspections, the SWPPP was unavailable and not provided for review following the inspection. During those inspections, and on the July 22, 2020, inspection, the SWPPP location information was not posted on site, nor was it in a centralized location.
    - i. Permit Part II.E.(1) and (2) state, "1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site. 2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department... If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be

posted near the main entrance of the construction site.”

- ii. VSMP Regulation 9 VAC 25-870-54(G) states in part, “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site.”
- b. During the May 6, July 22, and November 13, 2020, inspections, the 2019 Permit coverage letter was not posted near the entrance of the construction site.
  - i. Permit Part II.D states in part, “Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity... The operator shall maintain the posted information until termination of general permit coverage as specified in Part I.F.”
- c. During the May 6, June 29, and July 22, 2020, inspections, no pollution prevention plans, self-inspection reports, legible site plan, or signed registration statements were present within the SWPPP.
  - i. VSMP Regulation 9VAC25-870-56(A) states, “A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants...”
  - ii. Permit Part II.B.4 states in part, “The SWPPP shall include the following items:... 4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any supporting activity...”
  - iii. Permit Part II.G.5 states in part, “The inspection report shall be included into the SWPPP no later than four business days after the inspection is complete.”
  - iv. Permit Part II.G.2.a states in part, “Inspections shall be conducted at a frequency of: (1) At least once every five business days; or (2) At least once every 10 business days and no later than 48 hours following a measureable storm event.”
  - v. Permit Part II.B.1.(a) & (c) states in part, “Contents. The SWPPP shall include the following items: 1. General Information. a. A signed copy of the registration statement, if required, for coverage under the general

VPDES permit for discharges of stormwater from construction activities;... c. A legible site plan..."

- d. During the following inspections, erosion and sediment control measures were observed to have not been maintained: January 27, 2020: maintenance was not occurring on the temporary sediment pond as required in the plan, and rill erosion observed coming from NE channel that flows into sediment basin #1. February 21, 2020: silt fencing was not properly joined and its inlet protection was undermined, concrete washout was full, and rill erosion observed coming from NE channel that flows into sediment basin #1. May 6, 2020: rill erosion observed coming from NE channel that flows into sediment basin #1. May 28, 2020: rill erosion observed coming from NE channel that flows into sediment basin #1, and multiple sections of silt fencing on NE and SW portions of property not entrenched properly. June 29, 2020: sediment basin had not been routinely maintained as needed to ensure functionality; the banks of sediment basin remained without vegetative cover, and no maintenance had been done to address large rills present on the banks. July 22, 2020: silt fence behind the bioretention pond was observed to be installed incorrectly, and sediment/straw were observed outside of the limit of disturbance. November 13, 2020: silt fencing at the back of the site was undermined/knocked down, and the silt fencing at the bioretention near the parking lot was undermined.
  - i. Permit Part II.F.1 states, "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."
  - ii. ESC Regulation 9VAC25-840-60(A) states, "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure (sic) continued performance of their intended function..."
- e. During the July 22 inspection, the sequence of construction for the permanent BMP was not followed. The sediment basin was converted to the permanent bioretention pond; the grass buffer and contributing drainage area that flows to the bioretention did not have the prerequisite "dense and healthy vegetation," as stated in the plan.
  - i. VSMP Regulation 9VAC25-870-54(B) states, "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulation."

- ii. VSMP Regulation 9VAC25-870-54(C) states, "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."
- f. During the inspections on January 27, February 21, and July 22, 2020 denuded areas were observed that had been dormant for more than 14 days: stabilization measures had not been followed as stated in the approved plan.
  - i. ESC Regulation 9VAC25-840-40(1) states, "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be dormant for more than one year."
  - ii. VSMP Regulation 9VAC25-870-54(B) states, "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."
  - iii. 2019 Permit Part II.B.2.(c)(8) states in part, "A properly implemented erosion and sediment control plan... ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have been permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days..."
- 8. The Department has not issued coverage under any permit or certificate to A & K Development Corporation for the Trinity Senior Living development site other than under the 2019 Permit.
- 9. Based on the results of the January 27, 2020, February 21, 2020, May 6, 2020, May 28, 2020, June 29, 2020, July 22, 2020, and November 13, 2020, inspections, the Board concludes that A & K Development Corporation has violated the following, as described in paragraphs C(1) through C(8) of this Order:
  - a. 2019 Permit Part II.E.1 & 2; Part II.D; Part II.G.2.a; Part II.G.5; Part II.B.4; Part II.B.1.(a); Part II.B.1.(e); Part II.F.1; and Part II.B.2.(c)(8),
  - b. ESC Regulations 9 VAC 25-840-60(A); and 9 VAC 25-840-40(1), and
  - c. VSMP Regulations 9 VAC 25-870-54(G); 9 VAC 25-870-56(A); 9 VAC 25-870-54(B); and 9 VAC 25-870-54(C).



10. NRO issued Warning Letters and a Notice of Violation for the violations noted above as follows: WL No. SW2020-06-NRO-0001, issued June 18, 2020; WL No. SW2020-07-NRO-0001, issued July 9, 2020; and NOV No. SW2020-08-NRO-001, issued August 5, 2020.
11. A & K Development Corporation responded to the Warning Letters and Notice of Violation by submitting a plan and schedule of corrective action to address the violations. Corrective actions have been completed for the current stage of the project, and future actions necessary for permit termination will be handled through standard compliance methods.
12. On November 24, 2020, Department staff met with representatives of A & K Development Corporation to discuss the violations, and requested a comprehensive written response to the WL's, NOV, and inspection reports. A & K Development Corporation submitted a written response on December 31, 2020.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders A & K Development Corporation, and A & K Development Corporation agrees to pay a civil charge of \$4,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

A & K Development Corporation shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, A & K Development Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of A & K Development Corporation for good cause shown by A & K Development Corporation, or on

its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, A & K Development Corporation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. A & K Development Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. A & K Development Corporation declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by A & K Development Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. A & K Development Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. A & K Development Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. A & K Development Corporation shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and A & K Development Corporation. Nevertheless, A & K Development Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after A & K Development Corporation has completed all of the requirements of the Order;
  - b. A & K Development Corporation petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to A & K Development Corporation.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve A & K Development Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by A & K Development Corporation and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of A & K Development Corporation certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind A & K Development Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of A & K Development Corporation.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, A & K Development Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Tiffany R. Severs, Director of Enforcement  
Department of Environmental Quality

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Consent Order

A & K Development Corporation; VPDES Permit Reg. No. VARI0N099

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A & K Development Corporation voluntarily agrees to the issuance of this Order.

Date: 2/23/2021 By: MOJTABA AZIMIPOUR PRESIDENT

(Person)

(Title)

A & K Development Corporation

Commonwealth of Virginia

City/County of Orange

The foregoing document was signed and acknowledged before me this 23 day of

February, 2022, by Mojtaba Azimipour who is

President of A & K Development Corporation, on behalf of the corporation.

Heather L. Rector  
Notary Public

326797

Registration No.

My commission expires: May 31, 2023

Notary seal:



Heather L. Rector  
Commonwealth of Virginia  
Notary Public  
Commission No. 326797  
My Commission Expires 05/31/2023